

² Respondent's Brief at 11 (filed Sept. 5, 2006).

Claimant contends the Order should be affirmed in all respects. Claimant maintains the medications ultimately provided and approved by Dr. Barrett do not adequately address her ongoing pain complaints and thus, her treatment is not satisfactory.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal of a post award request for medical treatment. The claimant and respondent entered into an Agreed Award on March 6, 2006 and pursuant to that agreement, future medical was to be provided upon proper application. On March 28, 2006 claimant filed an Application for Post Award Medical, specifically seeking prescription medication for pain management, physical therapy and other treatment for her injury.³

Shortly after this request was filed respondent designated Dr. Barrett as a treating physician. Dr. Barrett had seen claimant earlier in connection with this claim. But Dr. Barrett's opinions as to claimant's diagnosis of RSD and her need for pain medications differ from those of the other physicians who have seen and treated the claimant. When Dr. Barrett saw the claimant, she offered a non-narcotic pain medication and told her to return as needed. Claimant was displeased that she had waited for an hour to see Dr. Barrett then their meeting lasted, according to her, only 5 minutes, and filed a request for a change of physician.

The ALJ granted claimant's request for a change of physician and directed respondent to designate 3 physicians from which claimant could select one to direct her care. Such an order is contemplated under the Act. K.S.A. 44-510h(b)(1) states in pertinent part:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

Claimant suggests that she alone is given the right to determine the satisfactory nature of a physician's treatment.⁴ The Board disagrees. Although the claimant is usually

³ Form E-4 (filed Mar. 28, 2006).

⁴ Claimant's Brief at 3 (filed Sept. 11, 2006).

in the position of requesting a change, and does so for a variety of reasons, there is nothing within the statute that gives a claimant the sole right to initially decide whether a physician's services are satisfactory.

On the other hand, respondent suggests that a claimant is not entitled to a change of physician until he or she has followed through with all treatment recommendations. To do any less is indicative of a less than "sincere" effort.⁵ The Board disagrees with this contention as well.

After considering this matter, including the claimant's testimony and the records entered into evidence at the hearing, the Board finds, under these facts and circumstances, the ALJ's Post Award Order should be affirmed. As the requesting party, claimant has demonstrated that Dr. Barrett's services are unsatisfactory. Thus, the ALJ properly granted her request.

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Order of Administrative Law Judge Thomas Klein dated August 10, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Alexander B. Mitchell, Attorney for Claimant
D. Steven Marsh/Janell Jenkins Foster, Attorneys for Resp. and its Ins. Carrier
Thomas Klein, Administrative Law Judge

⁵ Respondent's Brief at 11 (filed Sept. 5, 2006).